§ 985.109 Default under the Annual Contributions Contract (ACC).

HUD may determine that an PHA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC.

Subpart C—Physical Assessment Component [Reserved]

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

Subpart A—Performance Funding System

Subpart B—Financial Management Systems, Monitoring and Reporting

Subpart C—Project-Based Accounting

Subpart D—Resident Management Corporations Operating Subsidy

AUTHORITY: 42 U.S.C. 1437(g) and 3535(d).

SOURCE: 41 FR 55676, Dec. 21, 1976, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984.

NOTE: It is hereby certified that the economic and inflationary impacts of this regulation has been carefully evaluated in accordance with OMB Circular A–107.

Subpart A—Performance Funding System

§ 990.101 Purpose.

Implementation of Section 9(a). The purpose of this subpart is to establish standards and policies for the determination of operating subsidy eligibility in accordance with section 9(a) of the U.S. Housing Act of 1937, 42 U.S.C. 1437g. Section 9(a) authorizes the Secretary of Housing and Urban Development (HUD) to make annual contributions for the operation of PHA-owned rental housing (operating subsidy).

[61 FR 17539, Apr. 19, 1996]

§ 990.102 Definitions.

Allowable Expense Level (AEL). The per unit per month dollar amount of expenses (excluding Utilities and expenses allowed under § 990.108) computed in accordance with § 990.105, which is used to compute the amount of operating subsidy.

Allowable Utilities Consumption Level (AUCL). The amount of Utilities expected to be consumed per unit per month by the PHA during the Requested Budget Year, which is equal to the average amount consumed per unit per month during the Rolling Base Period.

Base Year. The PHA's fiscal year immediately preceding its first fiscal year under PFS.

Base Year Expense Level. The expense level (excluding Utilities, audits and certain other items) for the Base Year, computed as provided in §990.105.

Current Budget Year. The fiscal year in which the PHA is currently operating.

Formula. The revised formula derived from the actual expenses of the PFS sample group of PHAs, which is used in PFS, as provided in §990.105, to determine the Formula Expense Level and the Range of each PHA.

Formula Expense Level. The per unit per month dollar amount of expenses (excluding Utilities and audits) computed under the Formula, in accordance with §990.105.

HUD Field Office. The HUD Field Office that has been delegated authority under the U.S. Housing Act of 1937 to perform functions pertaining to this subpart for the area in which the PHA is located.

Local Inflation Factor. The HUD-supplied weighted average percentage increase in local government wages and salaries for the area in which the PHA is located and non-wage expenses;

Long-term vacancy. This term means the same as it is used in the definition of ''Unit Months Available'' in this section.

Operating budget. The PHA's operating budget and all related documents, as required by HUD, approved by the PHA Board of Commissioners;

Other income. Income other than dwelling rental income and income from investments, except the following items are excluded: grants and gifts for operations, other than for utility expenses, received from Federal, State and local governments, individuals, or private organizations; amounts charged to tenants for repairs for which the PHA incurs an offsetting expense; and legal fees in connection with eviction proceedings, when those fees are lawfully charged to tenants.

Project. Each project under an Annual Contributions Contract to which PFS is applicable, as provided in §990.103.

Project Units. All dwelling units of a PHA's Projects.

Projected Operating Income Level. The per unit per month dollar amount of dwelling rental income plus nondwelling income, computed as provided in §990.109.

Requested Budget Year. The budget year (fiscal year) of a PHA following the Current Budget Year.

Rolling Base Period. The 36-month period that ends 12 months before the beginning of the PHA Requested Budget Year, which is used to determine the Allowable Utilities Consumption Level used to compute the Utilities Expense Level.

Top of Range. Formula Expense Level multiplied by 1.15.

Transition funding. Funding for excessively high-cost PHAs, as provided in §990.106.

Unit Approved for Deprogramming. (a) A dwelling unit for which HUD has approved the PHA's formal request to remove the dwelling unit from the PHA's inventory and the Annual Contributions Contract but for which removal, *i.e.,* deprogramming, has not yet been completed, or (b) a nondwelling structure or a dwelling unit used for nondwelling purposes which the PHA has determined will no longer be used for PHA purposes and which HUD has approved for removal from the PHA's inventory and Annual Contributions Contract.

Unit months available. Project Units multiplied by the number of months the Project Units are available for occupancy during a given PHA fiscal year. For purposes of this part, a unit is considered available for occupancy from the date established as the End of the Initial Operating Period for the Project until the time the unit is approved by HUD for deprogramming and is vacated or is approved for nondwelling use. In the case of a PHA development involving the acquisition of scattered site housing, see also §990.104(b). A unit will be considered a long-term vacancy and will not be considered available for occupancy in any given PHA Requested Budget Year if the PHA determines that:

(1) The unit has been vacant for more than 12 months at the time the PHA determines its Actual Occupancy Percentage;

(2) The unit is not either: (i) A vacant unit undergoing modernization; or (ii) A unit vacant for circumstances and actions beyond the PHA's control, as these terms are defined in this section; and

(3) The PHA determines that it will have a vacancy percentage of more than 3 percent and will have more than five vacant units, for its Requested Budget Year, even after adjusting for vacant units undergoing modernization and units that are vacant for circumstances and actions beyond the PHA's control, as defined in this section. (Reference in this part to ''more than five units'' or ''fewer than five units'' shall refer to a circumstance in which five units equals or exceeds 3 percent of the number of units to which the 3 percent threshold is applicable.)

Units vacant due to circumstances and actions beyond the PHA's control. Dwelling units that are vacant due to circumstances and actions that prohibit the PHA from occupying, selling, demolishing, rehabilitating, reconstructing, consolidating or modernizing vacant units and are beyond the PHA's control. For purposes of this definition, circumstances and actions beyond the PHA's control are limited to:

(1) *Litigation.* The effect of court litigation such as a court order or settlement agreement that is legally enforceable. An example would be units that are being held vacant as part of a court-ordered or HUD-approved desegregation plan.

(2) *Laws.* Federal or State laws of general applicability, or their implementing regulations. Units vacant only because they do not meet minimum standards pertaining to construction or habitability under Federal, State, or local laws or regulations will not be considered vacant due to circumstances and actions beyond the PHA's control.

(3) *Changing market conditions.* For example, small PHAs that are located in areas experiencing population loss or economic dislocations may face a lack of demand in the foreseeable future, even after the PHA has taken aggressive marketing and outreach measures.

(4) *Natural disasters.*

(5) *Insufficient funding* for otherwise approvable applications made for Comprehensive Improvement Assistance Program (CIAP) funds.

(6) *RMC Funding.* The failure of a PHA to fund an otherwise approvable RMC request for Federal modernization funding;

(7) *Casualty Losses.* Delays in repairing damage to vacant units due to the time needed for settlement of insurance claims.

Utilities. Electricity, gas, heating fuel, water and sewerage service.

Utilities expense level. The per unit per month dollar amount of Utilities expense, computed as provided in §990.107.

Vacant unit undergoing modernization. Except as provided in § 990.119(a), a vacant unit in a project not considered to be obsolete (as determined using the indicia in § 970.6 of this chapter), when the project is undergoing modernization that includes work that is necessary to reoccupy the vacant unit, and in which one of the following conditions is met:

(1) The unit is under construction (i.e., the construction contract has been awarded or force account work has started); or

(2) The treatment of the vacant unit is included in a HUD-approved modernization budget (e.g., the Annual Statement for the Comprehensive Grant Program (CGP) (Form HUD–52837 or its successor), or the Comprehensive Improvement Assistance Program (CIAP) Budget (Form HUD–52825 or its successor)), but the time period for placing the vacant unit under construction has not yet expired. The PHA must place the vacant unit under construction within two Federal Fiscal Years (FFYs) after the FFY in which the modernization funds are approved.

[50 FR 52280, Dec. 23, 1985, as amended at 51 FR 16839, May 7, 1986; 57 FR 4289, Feb. 4, 1992; 59 FR 51854, Oct. 13, 1994; 60 FR 57305, Nov. 14, 1995; 61 FR 7590, Feb. 28, 1996; 61 FR 17539, Apr. 19, 1996]

§ 990.103 Applicability of PFS.

(a) PFS has been and will be utilized in determining the amounts of operating subsidy payable to PHAs. PFS is applicable to all PHA-owned rental units under Annual Contributions Contracts. PFS applies to PHAs that have not received operating subsidy payments previously, but are eligible for such payments under PFS. PFS, as described in this part, is not applicable to Indian Housing, the Section 23 Leased

Housing Program, the Section 23 Housing Assistance Payments Program, the Section 8 Housing Assistance Payments Program, or the Turnkey III or Turnkey IV Homeownership Opportunity Programs. PFS is not applicable to housing owned by the PHAs of the Virgin Islands, Puerto Rico, Guam, and Alaska. Operating subsidy payments to these PHAs are made in accordance with subpart B of this part. PFS for Indian Housing is described in 24 CFR part 950.

(b) *Financial management, monitoring and reporting.* The financial management system, monitoring and reporting on program performance and financial reporting will be in compliance with 24 CFR 85.20, 85.40 and 85.41 except to the extent that HUD requirements provide for additional specialized procedures which are determined by HUD to be necessary for the proper management of the program in accordance with the requirements of the U.S. Housing Act of 1937 and the Annual Contributions Contracts between the PHAs and HUD.

[41 FR 55676, Dec. 21, 1976. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 53 FR 8067, Mar. 11, 1988; 56 FR 923, Jan. 9, 1991; 61 FR 17539, Apr. 19, 1996]

§ 990.104 Determination of amount of operating subsidy under PFS.

(a) The amount of operating subsidy for which each PHA is eligible shall be determined as follows: The Projected Operating Income Level is subtracted from the total expense level (Allowable Expense Level plus Utilities Expense Level). These amounts are per unit per month dollar amounts, and must be multiplied by the Unit Months Available. Transition Funding, if applicable, and other costs as specified in § 990.108 are then added to this total in order to determine the total amount of operating subsidy for the Requested Budget Year, exclusive of consideration of the cost of an independent audit. As an independent operating subsidy eligibility factor, a PHA may receive operating subsidy in an amount, approved by HUD, equal to the actual or estimated cost of an independent audit to be prorated to operations of the PHA-owned rental housing. See § 990.110 regarding adjustments.

(b) In the case of a PHA development involving the acquisition of scattered site housing, the PHA may submit, and HUD shall review and can approve, a revised Development Cost Budget reflecting the number of units that were occupied during the previous six months, and the Unit Months Available used in the calculation of operating subsidy eligibility shall be revised to include the number of months the new/acquired units are actually occupied.

(c) A special phase-down of subsidy to HAs is applicable when demolition of units is approved by HUD in Federal Fiscal Year 1995 and later. See § 990.114.

[41 FR 55676, Dec. 21, 1976; 42 FR 18064, Apr. 5, 1977; 48 FR 42812, Sept. 20, 1983. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 50 FR 39092, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986; 52 FR 29361, Aug. 6, 1987; 60 FR 57305, Nov. 14, 1995; 61 FR 7591, Feb. 28, 1996; 61 FR 51183, Sept. 30, 1996]

§ 990.105 Computation of allowable expense level.

The PHA shall compute its Allowable Expense Level using forms prescribed by HUD, as follows:

(a) *Computation of Base Year Expense Level.* The Base Year Expense Level includes Payments in Lieu of Taxes (PILOT) required by a Cooperation Agreement even if PILOT is not included in the Operating Budget for the Base Year because of a waiver of the requirements by the local taxing jurisdiction(s). The Base Year Expense Level includes all other operating expenditures as reflected in the PHA's Operating Budget for the Base Year except the following:

(1) Utilities expense;

(2) Cost of an independent audit;

(3) Adjustments applicable to budget years before the Base Year;

(4) Expenditures supported by supplemental subsidy payments applicable to budget years before the Base Year;

(5) All other expenditures which are not normal fiscal year expenditures as to amount or as to the purpose for which expended; and

(6) Expenditures which were funded from a nonrecurring source of income.

(b) *Adjustment.* In compliance with the above six exclusions, the PHA shall adjust the Allowable Expense Level by excluding any of these items from the Base Year Expense Level if this has not already been accomplished. If such adjustment is made in the second or some subsequent fiscal year of the PFS, the Allowable Expense Level shall be adjusted in the year in which the adjustment is made, but the adjustment shall not be applied retroactively. If the PHA does not make these adjustments, the HUD Field Office shall compute the adjustments.

(c) *Computation of Formula Expense Level.* The PHA shall compute its Formula Expense Level in accordance with a HUD-prescribed formula that estimates the cost of operating an average unit in a particular PHA's inventory. It uses weights and a Local Inflation Factor assigned each year to derive a Formula Expense Level for the current year and the requested budget year. The formula is the sum of the following six numbers and the weights of the formula and the formula are subject to updating by HUD:

(1) The number of pre-1940 rental units occupied by poor households in 1980 as a percentage of the 1980 population of the community multiplied by a weight of 7.954. This Census-based statistic applies to the county of the PHA, except that, if the PHA has 80 percent or more of its units in an incorporated city of more than 10,000 persons, it uses city-specific data. County data will exclude data for any incorporated cities of more than 10,000 persons within its boundaries.

(2) The Local Government Wage Rate multiplied by a weight of 116.496. The wage rate used is a figure determined by the Bureau of Labor Statistics. It is a county-based statistic, calibrated to a unit-weighted PHA standard of 1.0. For multi-county PHAs, the local government wage is unit-weighted. For this formula, the local government wage index for a specific county cannot be less than 85 percent or more than 115 percent of the average local government wage for counties of comparable population and metro/non-metro status, on a state-by-state basis. In addition, for counties of more than 150,000 population in 1980, the local government wage cannot be less than 85 percent or more than 115 percent of the wage index of private employment determined by the Bureau of Labor Statistics and the rehabilitation cost index of labor and materials determined by the R.S. Means Company.

(3) The lesser of the current number of the PHA's two or more bedroom units available for occupancy, or 15,000 units, multiplied by a weight of .002896.

(4) The current ratio of the number of the PHA's two or more bedroom units available for occupancy in high-rise family projects to the number of all the PHA's units available for occupancy multiplied by a weight of 37.294. For this indicator, a high-rise family project is defined as averaging 1.5 or more bedrooms per unit available for occupancy and averaging 35 or more units available for occupancy per building and containing at least one building with units available for occupancy that is 5 or more stories high.

(5) The current ratio of the number of the PHA's three or more bedroom units available for occupancy to the number of all the PHA's units available for occupancy multiplied by a weight of 22.303.

(6) An equation calibration constant of −.2344.

(d) *Computation of Allowable Expense Level.* The PHA shall compute its Allowable Expense Level as follows:

(1) *Allowable Expense Level for first budget year under PFS where Base Year Expense Level does not exceed the top of the range.* Every PHA whose Base Year Expense Level is less than the top of the range shall compute its Allowable Expense Level for the first budget year under the PFS by adding the following to its Base Year Expense Level (before adjustments under § 990.110):

(i) Any increase approved by HUD in accordance with § 990.110;

(ii) The increase (decrease) between the Formula Expense Level for the Base Year and the Formula Expense Level for the first budget year under PFS; and

(iii) The sum of the Base Year Expense Level, and any amounts described in paragraphs (d)(1) (i) and (ii) of this section multiplied by the Local Inflation Factor.

(2) *Allowable Expense Level for first budget year under PFS where Base Year Expense Level exceeds the top of the range.* Every PHA whose Base Year Expense Level exceeds the top of the

range shall compute its Allowable Expense Level for the first budget year under PFS by adding the following to the top of the range (not to its Base Year Expense Level, as in paragraph (d)(1) of this section):

(i) The increase (decrease) between the Formual Expense Level for the Base Year and the Formula Expense Level or the first budget year under PFS;

(ii) The sum of the figure equal to the top of the range and the increase (decrease) described in paragraph (d)(2)(i) of this section, multiplied by the Local Inflation Factor. (If the Base Year Expense Level is above the Allowable Expense Level, computed as provided above, the PHA may be eligible for Transition Funding under §990.106.)

(3) *Allowable Expense Level for first budget year under PFS for a new project.* A new project of a new PHA or a new project of an existing PHA that the PHA decides to place under a separate ACC, which did not have a sufficient number of units available for occupancy in the Base Year to have a level of operations representative of a full fiscal year of operation is considered to be a ''new project''. The AEL for the first budget year under PFS for a ''new project'' will be based on the AEL for a comparable project, as determined by the HUD field office. The PHA may suggest a project or projects it believes to be comparable.

(4) *Allowable Expense Level for budget years after the first budget year under PFS.* For each budget year after the first budget year under PFS, the AEL shall be computed as follows:

(i) The Allowable Expense Level shall be increased by any increase to the AEL approved by HUD under §990.108(c);

(ii) The AEL for the Current Budget Year also shall be adjusted as follows:

(A) Increased by one-half of one percent (.5 percent); and

(B) If the PHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on this paragraph, it shall use the increase (decrease) between the Formula Expense Level calculated using the PHA's characteristics that applied to the Requested Year when the last adjustment to the AEL was made based on this paragraph and the Formula Expense Level calculated using the PHA's characteristics for the Requested Budget Year.

(iii) The amount computed in accordance with paragraphs (d)(4) (i) and (ii) of this section shall be multiplied by the Local Inflation Factor.

(5) *Adjustment of Allowable Expense Level for budget years after the first budget year under PFS.* HUD may adjust the Allowable Expense Level of budget years after the first year under PFS under the provisions of §990.105(b) or §990.108(c).

(6) *Allowable Expense Level for budget years after the first budget year under PFS that begin on or after April 1, 1992.* For each budget year after the first budget year under PFS that begins on or after April 1, 1992, the AEL shall be computed as follows:

(i) The Allowable Expense Level shall be increased by any increase to the AEL approved by HUD under §990.108(c);

(ii) The AEL for the Current Budget Year also shall be adjusted as follows:

(A) Increased by one-half of one percent (.5 percent); and

(B) If the PHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on paragraph (d)(4) or (d)(5)(ii)(B) of this section or this paragraph, it shall use the increase (decrease) between the Formula Expense Level calculated using the PHA's characteristics that applied to the Requested Year when the last adjustment to the AEL was made based on paragraph (d)(5)(ii)(B) or this paragraph (d)(6)(ii)(B) and the Formula Expense Level calculated using the PHA's characteristics for the Requested Budget Year.

(iii) The amount computed in accordance with paragraphs (d)(6) (i) and (ii) of this section shall be multiplied by the Local Inflation Factor.

(7) *Adjustment of Allowable Expense Level for budget years after the first budget year under PFS.* HUD may adjust the Allowable Expense Level of budget years after the first year under PFS under the provisions of §990.105(b) or §990.108(c).

(e) *Retrospective adjustment.* A PHA may apply a one-time retrospective adjustment to its Allowable Expense Level to compensate for the inadequacy of the inflation factors used in the PFS in the Federal fiscal years 1977 through 1981. This adjustment has the effect of increasing the non-utility portion of the Allowable Expense Level to a level that would have resulted if the proper percentages derived from the combined inflation factor had been used in those years. This adjustment is to be applied to the HUD approved Allowable Expense Level Per Unit Month (PUM) amount for PHA fiscal years beginning January 1, 1981, April 1, 1981, July 1, 1981, or October 1, 1981. Even though the adjustment is termed retrospective, it does not provide additional operating subsidy eligibility for PHA fiscal years before those beginning January 1, 1982. This adjustment shall be applied as follows:

(1) *A PHA:* (i) In operation during the PHA fiscal year beginning January 1, 1977, April 1, 1977, July 1, 1977, or October 1, 1977; or (ii) that started operation after these fiscal years but before the PHA fiscal year of January 1, 1982, April 1, 1982, July 1, 1982, or October 1, 1982; and (iii) that used a comparable PHA's Allowable Expense Level, shall apply the retrospective adjustment percentage provided by HUD.

(2) A PHA that entered operation during the PHA fiscal year beginning January 1, 1978, April 1, 1978, July 1, 1978, or October 1, 1978 but before the PHA fiscal year beginning January 1, 1982, April 1, 1982, July 1, 1982, or October 1, 1982, and that computed its own Allowable Expense Level for purposes of the PFS calculation, shall request the appropriate adjustment percentage from HUD, which will reflect the number of years the PHA has been in operation. This adjustment percentage shall be applied in accordance with this regulation.

(3) A PHA that starts operation during the PHA fiscal year beginning January 1, 1982, April 1, 1982, July 1, 1982, or October 1, 1982, or thereafter, shall not apply an adjustment since its beginning Allowable Expense Level will properly reflect the Local Inflation Factor.

(f) *Adjustment for FY 1989.* To reflect the increased costs incurred by PHAs to obtain required risk protection coverage (through private insurance, PHA sponsored insurance entities, or through self-insurance, as approved in accordance with the ACC), the calculation of AEL for the PHA's fiscal year beginning in 1989 will include an additional step following the determination made in accordance with paragraphs (a) through (e) of this section: the AEL per unit month derived in accordance with those paragraphs is to be adjusted by adding $8.45. This adjustment is a one-time permanent adjustment made only in fiscal year 1989.

[49 FR 3176, Jan. 26, 1984. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 50 FR 39092, Sept. 27, 1985; 50 FR 47374, Nov. 18, 1985; 50 FR 52281, Dec. 23, 1985; 52 FR 29361, Aug. 6, 1987; 53 FR 25155, July 5, 1988; 56 FR 923, Jan. 9, 1991; 57 FR 4289, Feb. 4, 1992; 61 FR 17539, Apr. 19, 1996]

§ 990.106 Transition funding for excessively high-cost PHAs.

If a PHA's Base Year Expense Level exceeds its Allowable Expense Level, computed as provided in § 990.105, for any budget year under PFS, the PHA may be eligible for Transition Funding. Transition Funding shall be an amount not to exceed the difference between the Base Year Expense Level and the Allowable Expense Level for the Requested Budget Year, multiplied by the number of Unit Months Available. HUD shall have the right to discontinue payment of all or part of the Transition Funding in the event HUD at any time determines that the PHA has not achieved a satisfactory level of management efficiency, or is not making efforts satisfactory to HUD to improve its management performance.

§ 990.107 Computation of utilities expense level.

(a) The PHA's Utilities Expense Level for the requested Budget Year shall be computed by multiplying the AUCL per unit per month for each utility, determined as provided in paragraph (c) of this section, by the projected utility rate determined as provided in paragraph (b) of this section.

(b) *Utilities rates.* (1) The current applicable rates, with consideration of adjustments and pass-throughs, in effect at the time the Operating Budget is submitted to HUD will be used as the utilities rates for the Requested Budget Year, except that, when the appropriate utility commission has, prior to the date of submission of the Operating Budget to HUD, approved and published rate changes to be applicable during the Requested Budget Year, the future approved rates may be used as the utilities rates for the entire Requested Budget Year.

(2) If a PHA takes action, such as wellhead purchase of natural gas, or administrative appeals or legal action beyond normal public participation in rate-making proceedings to reduce the rate it pays for utilities (including water, fuel oil, electricity, and gas), then the PHA will be permitted to retain one-half of the cost savings during the first 12 months attributable to its actions. Upon determination that the action was cost-effective in the first year, the PHA may be permitted to retain one-half the annual cost savings, if the actions continue to be cost-effective. See also paragraph (e) of this section and § 990.110(c).

(c) *Computation of Allowable Utilities Consumption Level.* The Allowable Utilities Consumption Level (AUCL) used to compute the Utilities Expense Level of PHA for the Requested Budget Year generally will be based on the availability of consumption data. For project utilities where consumption data are available for the entire Rolling Base Period, the computation will be in accordance with paragraph (c)(1) of this section. Where data are not available for the entire period, the computation will be in accordance with paragraph (c)(2) of this section, unless the project is a new project, in which case the computation will be in accordance with paragraph (c)(3) of this section. For a project where the PHA has taken special energy conservation measures that qualify for special treatment in accordance with paragraph (f)(1) of this section, the computation of the Allowable Utilities Consumption Level may be made in accordance with paragraph (c)(4) of this section. The AUCL for all of a PHA's projects is the sum of the amounts determined using all of these subparagraphs, as appropriate.

(1) *Rolling Base Period System.* For project utilities with consumption data for the entire Rolling Base Period, the AUCL is the average amount consumed per unit per month during the Rolling Base Period adjusted in accordance with paragraph (d) of this section. The PHA shall determine the average amount of each of the utilities consumed during the Rolling Base period (i.e., the 36-month period ending 12 months prior to the first day of the Requested Budget Year). An example of a rolling base is as follows:

(i) *PHA fiscal years affected.* The Rolling Base Period shall be used to compute the AUCL submitted with the Operating Budgets for PHA Fiscal Years beginning January 1, 1983, April 1, 1983, July 1, 1983, October 1, 1983 and thereafter.

(ii) An example of a rolling base is as follows:

PHA Fiscal Year (affected fiscal year)		Rolling base period	
Beginning	Ending	Begins	Ends
1–1–83	12–31–83 (1st year)	1–1–79	12–31–81
1–1–84	12–31–84 (2nd year) ...	1–1–80	12–31–82

(2) Alternative method where data is not available for the entire Rolling Base Period:

(i) If the PHA has not maintained or cannot recapture consumption data regarding a particular utility from its records for the whole Rolling Base Period mentioned in paragraph (c)(1) of this section, it shall submit consumption data for that utility for the last 24 months of its Rolling Base Period to the HUD Field Office for approval. If this is not possible, it shall submit consumption data for the last 12 months of its Rolling Base Period. The PHA also shall submit a written explanation of the reasons that data for the whole Rolling Base Period is unavailable.

(ii) In those cases where a PHA has not maintained or cannot recapture consumption data for a utility for the entire Rolling Base Period, comparable consumption for the greatest of either 36, 24, or 12 months, as needed, shall be used for the utility for which the data is lacking. The comparable consumption shall be estimated based upon the consumption experienced during the Rolling Base Period of comparable project(s) with comparable utility delivery systems and occupancy. The use of actual and comparable consumption by each PHA, other than those PHAs defined as New Projects in paragraph (c)(3) of this section, will be determined by the availability of complete data for the entire 36-month Rolling Base Period. Appropriate utility consumption records, satisfactory to HUD, shall be developed and maintained by all PHAs so that a 36-month rolling average utility consumption per unit per month under paragraph (c)(1) of this section can be determined.

(iii) If a PHA cannot develop the consumption data for the Rolling Base Period or for 12 or 24 months of the Rolling Base Period, either from its own project(s) data, or by using comparable consumption data the actual per unit per month (PUM) utility expenses stated in paragraph (d) of this section shall be used as the Utilities Expense Level.

(3) *Computation of Allowable Utilities Consumption Levels for New Projects.* (i) A New Project, for the purpose of establishing the Rolling Base Period and the Utilities Expense Level, is defined as either: (A) A project which had not been in operation during at least 12 months of the Rolling Base Period, or a project which enters management after the Rolling Base Period and prior to the end of the Requested Budget Year, or (B) a project which during or after the Rolling Base Period, has experienced conversion from one energy source to another; interruptable service; deprogrammed units; a switch from tenant-purchased to PHA-supplied utilities; or a switch from PHA-supplied to tenant-purchased utilities.

(ii) The actual consumption for New Projects shall be determined so as not to distort the Rolling Base Period in accordance with a method prescribed by HUD.

(4) *Freezing the Allowable Utilities Consumption Level.* (i) Notwithstanding the provisions of paragraphs (c)(1) and (c)(2) of this section, if a PHA undertakes energy conservation measures that are approved by HUD under paragraph (f) of this section, the Allowable Utilities Consumption Level for the project and the utilities involved may be frozen during the contract period. Before the AUCL is frozen, it must be adjusted to reflect any energy savings resulting from the use of any HUD funding. The AUCL is then frozen at the level calculated for the year during which the conservation measures initially will be implemented, as determined in accordance with paragraph (f) of this section.

(ii) If the AUCL is frozen during the contract period, the annual three-year rolling base procedures for computing the AUCL shall be reactivated after the PHA satisfies the conditions of the contract. The three years of consumption data to be used in calculating the AUCL after the end of the contract period will be as follows:

(A) *First year:* The energy consumption during the year before the year in which the contract ended and the energy consumption for each of the two years before installation of the energy conservation improvements;

(B) *Second year:* The energy consumption during the year the contract ended, energy consumption during the year before the contract ended, and energy consumption during the year before installation of the energy conservation improvements;

(C) *Third year:* The energy consumption during the year after the contract ended, energy consumption during the year the contract ended, and energy consumption during the year before the contract ended.

(d) *Utilities expense level where consumption data for the full Rolling Base Period is unavailable.* If a PHA does not obtain the consumption data for the entire Rolling Base Period, or for 12 or 24 months of the Rolling Base Period, either for its own project(s) or by using comparable consumption data as required in paragraph (c)(2) of this section, it shall request HUD Field Office approval to use actual PUM utility expenses. These expenses shall exclude Utilities Labor and Other Utilities Expenses. The actual PUM utility expenses shall be taken from the year-end Statement of Operating Receipts and Expenditures, Form HUD–52599, (Office of Management and Budget approval number 2505–0240) prepared for the PHA fiscal year which ended 12 months prior to the beginning of the

PHA Requested Budget Year (e.g., for a PHA fiscal year beginning January 1, 1983, the PHA would use data from the fiscal year ended December 31, 1981). Subsequent adjustments will not be approved for a budget year for which the utility expense level is established based upon actual PUM utility expenses.

(e) *Adjustments.* PHAs shall request adjustments of Utilities Expense Levels in accordance with § 990.110(c), which requires an adjustment based upon a comparison between actual experience and estimates of consumption and of utility rates.

(f) *Incentives for energy conservation improvements.* If a PHA undertakes energy conservation measures (including those covering water, fuel oil, electricity, and gas) that are financed by an entity other than the Secretary, such as physical improvements financed by a loan from a utility or governmental entity, management of costs under a performance contract, or a shared savings agreement with a private energy service company, the PHA may qualify for one of the two possible incentives under this part. For a PHA to qualify for these incentives, HUD approval must be obtained. Approval will be based upon a determination that payments under the contract can be funded from the reasonably anticipated energy cost savings, and the contract period does not exceed 12 years.

(1) If the contract allows the PHA's payments to be dependent on the cost savings it realizes, the PHA must use at least 50 percent of the cost savings to pay the contractor. With this type of contract, the PHA may take advantage of a frozen AUCL under paragraph (c)(4) of this section, and it may use the full amount of the cost savings, as described in § 990.110(c)(2)(ii).

(2) If the contract does not allow the PHA's payments to be dependent on the cost savings it realizes, then the AUCL will continue to be calculated in accordance with paragraphs (c)(1) through (c)(3) of this section, as appropriate; the PHA will be able to retain part of the cost savings, in accordance with § 990.110(c)(2)(i); and the PHA will qualify for additional operating subsidy eligibility (above the amount based on the allowable expense level) to cover the cost of amortizing the improvement loan during the term of the contract, in accordance with § 990.110(e).

(Approved by the Office of Management and Budget under control number 2577–0125)

[47 FR 57272, Dec. 23, 1982, and 48 FR 38229, Aug. 23, 1983. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 46362, Sept. 11, 1991; 57 FR 2679, Jan. 23, 1992; 59 FR 33655, June 30, 1994; 59 FR 51854, Oct. 13, 1994; 61 FR 17540, Apr. 19, 1996; 61 FR 51183, Sept. 30, 1996]

§ 990.108 Other costs.

(a) *Cost of independent audits.* (1) Eligibility to receive operating subsidy for independent audits is considered separately from the PFS. However, the PHA shall not request, nor will HUD approve, an operating subsidy for the cost of an independent audit if the audit has already been funded by subsidy in a prior year. The PHA's estimate of cost of the independent audit is subject to adjustment by HUD. If the PHA requires assistance in determining the amount of cost to be estimated, the HUD Field Office should be contacted.

(2) A PHA that is required by the Single Audit Act (see 24 CFR part 44) to conduct a regular independent audit may receive operating subsidy to cover the cost of the audit. The estimated cost of an independent audit, applicable to the operations of PHA-owned rental housing, is not included in the Allowable Expense Level, but it is allowed in full in computing the amount of operating subsidy under § 990.104, above.

(3) A PHA that is exempt from the audit requirements under the Single Audit Act (24 CFR part 44) may receive operating subsidy to offset the cost of an independent audit chargeable to operations (after the End of the Initial Operating Period) if the PHA chooses to have an audit.

(b)(1) Costs attributable to units approved for deprogramming and vacant may be eligible for inclusion, but must be limited to the minimum services and protection necessary to protect and preserve the units until the units are deprogrammed. Costs attributable to units temporarily unavailable for occupancy because the units are utilized for PHA-related activities are not eligible for inclusion. In determining the PFS operating subsidy, these units shall not be included in the calculation of Unit Months Available. Units approved for deprogramming shall be listed by the PHA, and supporting documentation regarding direct costs attributable to such units shall be included as a part of the Performance Funding System calculation in which the PHA requests operating subsidy for these units. If the PHA requires assistance in this matter, the PHA should contact the HUD Field Office.

(2) Units approved for nondwelling use to promote economic self-sufficiency services and anti-drug activities are eligible for operating subsidy under the conditions provided in this paragraph (b)(2), and the costs attributable to these units are to be included in the operating budget. If a unit satisfies the conditions stated below, it will be eligible for subsidy at the rate of the AEL for the number of months the unit is devoted to such use. Approval will be given for a period of no more than 3 years. HUD may renew the approval to allow payments after that period only if the PHA can demonstrate that no other sources for paying the non-utility operating costs of the unit are available. The conditions the unit must satisfy are:

(i) The unit must be used for either economic self-sufficiency activities directly related to maximizing the number of employed residents or for anti-drug programs directly related to ridding the development of illegal drugs and drug-related crime. The activities must be directed toward and for the benefit of residents of the development.

(ii) The PHA must demonstrate that space for the service or program is not available elsewhere in the locality and that the space used is safe and suitable for its intended use or that the resources are committed to make the space safe and suitable.

(iii) The PHA must demonstrate satisfactorily that other funding is not available to pay for the non-utility operating costs. All rental income generated as a result of the activity must be reported as income in the operating subsidy calculation.

(iv) Operating subsidy may be approved for only one site (involving one or more contiguous units) per public housing development for economic self-sufficiency services or anti-drug programs, and the number of units involved should be the minimum necessary to support the service or program. Operating subsidy for any additional sites per development can only be approved by HUD Headquarters.

(v) The PHA must submit a certification with its Performance Funding System Calculation that the units are being used for the purpose for which they were approved and that any rental income generated as a result of the activity is reported as income in the operating subsidy calculation. The PHA must maintain specific documentation of the units covered. Such documentation should include a listing of the units, the street addresses, and project/management control numbers.

(3) Long-term vacant units that are not included in the calculation of Unit Months Available are eligible for operating subsidy in the Requested Budget Year at the rate of 20 percent of the AEL. Allowable utility costs for long term vacant units will continue to be funded in accordance with § 990.107.

(c) *Costs attributable to changes in Federal law or regulation.* In the event that HUD determines that enactment of a Federal law or revision in HUD or other Federal regulation has caused or will cause a significant increase in expenditures of a continuing nature above the Allowable Expense Level and Utilities Expense Level, HUD may in HUD's sole discretion decide to prescribe a procedure under which the PHA may apply for or may receive an increase in operating subsidy.

(d)(1) *Costs resulting from combination of two or more units.* When a PHA redesigns or rehabilitates a project and combines two or more units into one larger unit and the combination of units results in a unit that houses at least the same number of people as were previously served, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year. The number of people served in a unit will be based on the formula ((2 x No. of Bedrooms) minus 1), which yields the average number of people that would be served. An efficiency unit will be counted as a one bedroom unit for purposes of this calculation.

(2) An exception to paragraph (d)(1) of this section is made when an HA combines two efficiency units into a one-bedroom unit. In these cases, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year.

(e) *Funding for Resident Council expenses.* In accordance with the provisions of 24 CFR part 964 and procedures determined by HUD, each HA shall include in the operating subsidy eligibility calculation, $25 per unit per year (subject to appropriations) for each unit represented by a duly elected resident council in support of the duly elected resident council's activities. Of this amount, $15 per unit per year shall fund resident participation activities of the duly elected resident council and/or jurisdiction-wide councils, including but not limited to stipends. Ten dollars per unit per year shall fund HA costs incurred in carrying out resident participation activities.

(f) *Funding for Resident Council office space.* If there is no community or rental space available, and HUD has approved the use of a vacant rental unit for Resident Council office space, the unit will be eligible for operating subsidy (subject to appropriations) at the rate of the AEL for the number of months the unit is devoted to such use.

(Approved by the Office of Management and Budget under control number 2577–0125)

[41 FR 55676, Dec. 21, 1976; 42 FR 18064, Apr. 5, 1977. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 50 FR 25958, June 24, 1985; 52 FR 29361, Aug. 6, 1987; 56 FR 46362, Sept. 11, 1991; 57 FR 2679, Jan. 23, 1992; 59 FR 33655, June 30, 1994; 59 FR 43644, Aug. 24, 1994; 61 FR 7591, Feb. 28, 1996; 61 FR 17540, Apr. 19, 1996; 61 FR 51183, Sept. 30, 1996]

§ 990.109 Projected operating income level.

(a) *Policy.* PFS determines the amount of operating subsidy for a particular PHA based in part upon a projection of the actual dwelling rental income and other income for the particular PHA. The projection of dwelling rental income is obtained by computing the average monthly dwelling rental charge per unit for the PHA, and projecting this amount for the Requested Budget Year by applying an upward trend factor (subject to updating) of 3 percent, and multiplying this amount by the Projected Occupancy Percentage for the Requested Budget Year. Nondwelling income is projected by the PHA subject to adjustment by HUD. There are special provisions for projection of dwelling rental income for new projects.

(b) *Computation of projected average monthly dwelling rental income.* The projected average monthly dwelling rental income per unit for the PHA is computed as follows:

(1)(i) *Average monthly dwelling rental charge per unit.* The dollar amount of the average monthly dwelling rental charge per unit shall be computed on the basis of the total dwelling rental charges (total of the adjusted rent roll amounts) for all Project Units, as shown on the Tenant Rent Rolls which the PHA is required to maintain, for the first day of the month which is six months prior to the first day of the Requested Budget Year, except that if a change in the total of the Rent Rolls has occurred in a subsequent month which is prior to the beginning of the Requested Budget Year and prior to the submission of the Requested Budget Year calculation of operating subsidy eligibility, the PHA shall use the latest changed Rent Roll for the purpose of the computation. This aggregate dollar amount shall be divided by the number of occupied dwelling units as of the same date.

(ii) The Rent Roll used for calculating the projected operating income level will not reflect decreases resulting from the HA's implementation of an optional earned income exclusion authorized by the definition of ''annual income'' in 24 CFR 913.106(d). But see § 990.116 for the earned income incentive adjustment.

(2) *Three percent increase.* The average monthly dwelling rental charge per unit, computed under paragraph (b)(1)

of this section, is increased by 3 percent to obtain the projected average monthly dwelling rental charge per unit of the HA for the Requested Budget Year, except that for the shorter of Federal Fiscal Years 1996 through 1998 or the period during which HUD has an operating subsidy shortfall, no increase factor will be used.

(3) *Projected Occupancy Percentage.* The PHA shall determine its projected percentage of occupancy for all Project Units (Projected Occupancy Percentage), as follows:

(i) *General.* Using actual occupancy data collected before the start of the budget year as a beginning point, the PHA will develop estimates for its Requested Budget Year (RBY) of: how many units the PHA will have available for occupancy; how many of the available units will be occupied and how many will be vacant, and what the average occupancy percentage will be for the RBY. The conditions under which the RBY occupancy percentage will be used as the projected occupancy percentage for purposes of determining operating subsidy eligibility are described below.

(ii) *High Occupancy PHA—No Adjustments Necessary.* If the PHA's RBY Occupancy Percentage, calculated in accordance with § 990.117, is equal to or greater than 97%, the PHA's Projected Occupancy Percentage is 97%. If the PHA's RBY Occupancy Percentage is less than 97%, but the PHA demonstrates that it will have an average of five or fewer vacant units in the requested budget year, the PHA will use its RBY Occupancy Percentage as its projected occupancy percentage.

(iii) *Adjustments in Determining Occupancy.* If the PHA's RBY Occupancy Percentage is less than 97% and the PHA has more than 5 vacant units, the PHA will adjust its estimate of vacant units to exclude vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control. After making this adjustment, the PHA will recalculate its estimated vacancy percentage for the RBY.

(A) *High Occupancy PHA after adjustment.* If the recalculated vacancy percentage is 3% or less (or the PHA would have five or fewer vacant units), the PHA will use its RBY Occupancy Percentage as its projected occupancy percentage.

(B) *Low Occupancy PHA—adjustment for long-term vacancies.* If the recalculated vacancy percentage is greater than 3% (or more than 5 vacant units), the PHA will then further adjust its RBY Occupancy Percentage by excluding from its calculation of Unit Months Available (UMAs), all units that have been vacant for longer than 12 months that are not vacant units undergoing modernization or are not units vacant due to circumstances and actions beyond the PHA's control.

(iv) *Low Occupancy PHA after all adjustments.* A PHA that has determined its RBY Occupancy Percentage in accordance with paragraph (b)(iii)(B) of this section will be eligible for operating subsidy as follows:

(A) Long-term vacancies removed from the calculation of UMAs will be eligible to receive a reduced operating subsidy calculated at 20% of the PHA's AEL.

(B) If the recalculated RBY Occupancy Percentage is 97% or higher, the PHA will use 97%.

(C) If the recalculated RBY Occupancy Percentage is less than 97%, but the vacancy rate after adjusting for vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control is 3% or less (or the PHA has five or fewer vacant units), the PHA may use its recalculated RBY Occupancy Percentage as its projected occupancy percentage.

(D) If the recalculated RBY Occupancy Percentage is less than 97% and the vacancy percentage is greater than 3% (or the PHA has more than five vacant units) after adjusting for vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control, the PHA will use 97% as its projected occupancy percentage, but will be allowed to adjust the 97% by the number of vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control. For a small PHA using five vacant units as its occupancy objective for the RBY, the PHA will determine what percentage five units represents as a portion of its units available for occupancy and subtract that percentage from 100%. The result will be used as the PHA's projected occupancy percentage, but the PHA will be allowed to adjust the projected occupancy percentage by vacant units undergoing modernization and units that are vacant for circumstances and actions beyond the PHA's control.

(4) *Projected average monthly dwelling rental income.* The projected occupancy percentage under paragraph (b)(3) of this section shall be multiplied by the projected average monthly dwelling rental charge under paragraph (b)(2) of this section to obtain the projected monthly dwelling rental income per unit.

(c) *Projected average monthly dwelling rental charge per unit for new Projects.* The projected average monthly dwelling rental charge for new Projects which were not available for occupancy during the budget year prior to the Requested Budget Year and which will reach the End of the Initial Operating Period (EIOP) within the first nine months of the Requested Budget Year, shall be calculated as follows:

(1) If the PHA has another Project or Projects under management which are comparable in terms of elderly and nonelderly tenant composition, the PHA shall use the projected average monthly dwelling rental charge for such Project or Projects.

(2) If the PHA has no other Projects which are comparable in terms of elderly and nonelderly tenant composition, the HUD Field Office will provide the projected average monthly dwelling rental charge for such Project or Projects, based on comparable Projects located in the area.

(d) *Estimate of additional dwelling rental income.* After implementation of the provisions of any legislation enacted or any HUD administrative action taken subsequent to the effective date of these regulations, which affects rents paid by tenants of Projects, each PHA shall submit a revision of its calculation of operating subsidy eligibility showing an estimate of any change in rental income which it anticipates as the result of the implementation of said provisions. HUD shall have complete discretion to adjust the projected average monthly dwelling rental charge per unit to reflect such change or in the absence of this submission, if HUD has knowledge of such change. HUD also shall have complete discretion to reduce or increase the operating subsidy approved for the PHA current fiscal year in an amount equivalent to the change in the rental income.

(e) *PHA's estimate of income other than dwelling rental income*—(1) *Investment income.* PHAs with an estimated average cash balance of less than $20,000, excluding investment income earned from a funded replacement reserve under § 968.310(g), shall make a reasonable estimate of investment income for the Requested Budget Year. PHAs with an estimated average cash balance of $20,000 or more, excluding investment income earned from a funded replacement reserve under § 968.310(g), shall estimate interest on general fund investments based on the estimated average yield for 91-day Treasury bills for the PHA's Requested Budget Year (yield information will be provided by HUD). The determination of average cash balance will allow a deduction of $10,000, plus $10 per unit for each unit over 1,000, subject to a total maximum deduction of $250,000. In all cases, the estimated investment income amount shall be subject to HUD approval. See § 990.110(b).

(2) *Other Income.* All PHAs shall estimate Other Income based on past experience and a reasonable projection for the Requested Budget Year, which estimate shall be subject to HUD approval.

(3) *Total.* The estimated total amount of income for investments and Other Income, as approved, shall be divided by the number of Unit Months Available to obtain a per unit per month amount. This amount shall be added to the projected average dwelling rental income per unit to obtain the Projected Operating Income Level. This amount shall not be subject to the provisions regarding program income in 24 CFR 85.25.

(f) *Required adjustments to estimates.* The PHA shall submit year-end adjustments of projected operating income levels in accordance with § 990.110(b), which covers investment income.

(Approved by the Office of Management and Budget under control number 2577–0066. Paragraphs (e) and (f) have been approved by the Office of Management and Budget under control number 2577–007)

[41 FR 55676, Dec. 21, 1976. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 50 FR 25958, June 24, 1985; 50 FR 47375, Nov. 18, 1985; 51 FR 16840, May 7, 1986; 52 FR 29361, Aug. 6, 1987; 53 FR 8067, Mar. 11, 1988; 57 FR 5588, Feb. 14, 1992; 61 FR 7591, Feb. 28, 1996; 61 FR 17541, Apr. 19, 1996; 61 FR 51183, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51183, Sept. 30, 1996, § 990.109(b) was amended. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 990.110 Adjustments.

Adjustment information submitted to HUD under this section must be accompanied by an original or revised calculation of operating subsidy eligibility.

(a) *Adjustment of base year expense level*—(1) *Eligibility*. A PHA with projects that have been in management for at least one full fiscal year, for which operating subsidy is being requested under the formula for the first time, may, during its first budget year under PFS, request HUD to increase its Base Year Expense Level. Included in this category are existing PHAs requesting subsidy for a project or projects in operation at least one full fiscal year under separate ACC, for which operating subsidy has never been paid, except for independent audit costs. This request may be granted by HUD, in its discretion, only where the PHA establishes to HUD's satisfaction that the Base Year Expense Level computed under § 990.105(a) will result in operating subsidy at a level insufficient to support a reasonable level of essential services. The approved increase cannot exceed the lesser of the per unit per month amount by which the top of the Range exceeds the Base Year Expense Level.

(2) *Procedure.* A PHA that is eligible for an adjustment under paragraph (a)(1) of this section may only make a request for such adjustment once for projects under a particular ACC, at the time it submits the calculation of operating subsidy eligibility for the first budget year under PFS. Such request shall be submitted to the HUD Field Office, which will review, modify as necessary, and approve or disapprove the request. A request under this paragraph must include a calculation of the amount per unit per month of requested increase in the Base Year Expense Level, and must show the requested increase as a percentage of the Base Year Expense Level.

(b) *Adjustments to estimated investment income.* A PHA that had an estimated average cash balance of at least $20,000 must submit a year-end adjustment to the estimated amount of investment income that was used to determine subsidy eligibility at the beginning of the PHA's fiscal year. The amount of the adjustment will be the difference between the estimate and a Target Investment Income amount based on the actual average yield on 91-day Treasury bills for the PHA's fiscal year being adjusted and the actual average cash balance available for investment during the PHA's fiscal year, computed in accordance with HUD requirements. HUD will provide the PHA with the actual average yield on 91-day Treasury bills for the PHA's fiscal year. Failure of a PHA to submit the required adjustment of investment income by the date due may, in the discretion of HUD, result in the withholding of approval of future obligation of operating subsidies until the adjustment is received.

(c) *Adjustments to Utilities Expense Level.* A PHA receiving operating subsidy under § 990.104, excluding those PHAs that receive operating subsidy solely for independent audit (§ 990.108(a)), must submit a year-end adjustment regarding the Utility Expense Level approved for operating subsidy eligibility purposes. This adjustment, which will compare the actual utility expense and consumption for the PHA fiscal year to the estimates used for subsidy eligibility purposes, shall be submitted on forms prescribed by HUD. This request shall be submitted to the HUD Field Office by a deadline established by HUD, which will be during the PHA fiscal year following the PHA fiscal year for which an operating subsidy was received by the PHA, exclusive of a subsidy solely for independent audit costs. Failure to submit the required adjustment of the Utilities Expense Level by the due date may, in the discretion of HUD, result in the withholding of approval of future obligation of operating subsidies until it is received. Adjustments under this subsection normally will be made in the PHA fiscal year following the year for which the adjustment is applicable, except as provided in paragraph (c)(5) of this section or unless a repayment plan is necessary as noted in paragraph (d) of this section.

(1) *Rates.* A change in the Utilities Expense Level because of changes in utility rates-to the extent funded by the operating subsidy-will result in an adjustment of future operating subsidy payments. However, where the rate reduction covering utilities, such as water, fuel oil, electricity, and gas, is directly attributable to action by the PHA, such as wellhead purchase of natural gas, or administrative appeals or legal action beyond normal public participation in rate-making proceedings, then the PHA will be permitted to retain one-half of the cost savings attributable to its actions for the first year and, upon determination that the action was cost-effective in the first year, for as long as the actions continue to be cost-effective, and the other one-half of the cost savings will be deducted from operating subsidy otherwise payable.

(2) *Consumption.* (i) Generally, 50 percent of any decrease in the Utilities Expense Level attributable to decreased consumption after adjustment for any utility rate change, will be retained by the PHA; 50 percent will be offset by HUD against subsequent payment of operating subsidy.

(ii) However, in the case of a PHA whose energy conservation measures have been approved by HUD as satisfying the requirements of § 990.107(f)(1), the PHA may retain 100 percent of the savings from decreased consumption after payment of the amount due the contractor until the term of the financing agreement is completed. The decreased consumption is to be determined by adjusting for any utility rate changes and may be adjusted, subject to HUD approval, using a heating degree day adjustment for space heating utilities. The savings realized must be applied in the following order:

(A) Retention of up to 50 percent of the total savings from decreased consumption to cover training of PHA employees, counseling of tenants, PHA management of the cost reduction program and any other eligible costs; and

(B) Prepayment of the amount due the contractor under the contract.

(iii) An increase in the Utilities Expense Level attributable to increased consumption will be fully funded by residual receipts after provision for reserves, if available. If residual receipts are not available and the increase would result in a reduction of the operating reserve below the authorized maximum, fifty percent of an increase in the Utilities Expense Level attributable to increased consumption, after adjustment for any utility rate change, will be funded by HUD by adjusting future operating subsidy payments.

(3) *Emergency adjustments.* In emergency cases, where a PHA establishes to HUD's satisfaction that a severe financial crisis would result from a utility rate increase, an adjustment covering only the rate increase may be submitted to HUD at any time during the PHA's Current Budget Year. Unlike the adjustments mentioned in paragraphs (c)(1) and (c)(2) of this section, this adjustment shall be submitted to the HUD Field Office by revision of the original submission of the estimated Utility Expense Level for the fiscal year to be adjusted.

(4) *Documentation.* Supporting documentation substantiating the requested adjustments shall be retained by the PHA pending HUD audit.

(d) *Requests for adjustments to projected average monthly dwelling rental income.* Requests for adjustments to projected average monthly dwelling rental income may be made as follows:

(1) *Criteria for granting request.* A PHA may request an adjustment to projected average monthly dwelling rental income under PFS if the PHA can establish to HUD's satisfaction that the projected amount computed under § 990.109 was not attained because of circumstances beyond the control of the PHA. The PHA must also demonstrate to HUD's satisfaction that it

has established and is effectively implementing tenant selection criteria in compliance with HUD requirements. HUD shall have complete discretion to approve completely, approve in part or deny any requested adjustment to projected average monthly dwelling rental income.

(2) *Procedure.* A request for an adjustment under this subsection shall be submitted to the HUD Field Office by a deadline established by HUD, which will be within twelve months following the PHA's fiscal year being adjusted. In emergency cases, however, where a PHA establishes to HUD's satisfaction that decreased rental income would result in a severe financial crisis, a request for adjustments may be submitted to HUD at an earlier time.

(e) *Energy conservation financing.* If HUD has approved an energy conservation contract under § 990.107(f)(2), then the PHA is eligible for additional operating subsidy each year of the contract to amortize the cost of the energy conservation measures under the contract, subject to a maximum annual limit equal to the cost savings for that year (and a maximum contract period of 12 years).

(1) Each year, the energy cost savings would be determined as follows:

(i) The consumption level that would have been expected if the energy conservation measure had not been undertaken would be adjusted for any change in utility rate and may be adjusted, subject to HUD approval, using a heating degree day adjustment for space heating utilities;

(ii) The actual cost of energy (of the type affected by the energy conservation measure) after implementation of the energy conservation measure would be subtracted from the expected energy cost, to produce the energy cost savings for the year. (See also paragraph (c)(2)(i) of this section for retention of consumption savings.)

(2) If the cost savings for any year during the contract period is less than the amount of operating subsidy to be made available under this paragraph (e) to pay for the energy conservation measure in that year, the deficiency will be offset against the PHA's operating subsidy eligibility for the PHA's next fiscal year.

(3) If energy cost savings are less than the amount necessary to meet amortization payments specified in a contract, the contract term may be extended (up to the 12-year limit) if HUD determines that the shortfall is the result of changed circumstances rather than a miscalculation or misrepresentation of projected energy savings by the contractor or PHA. The contract term may only be extended to accommodate payment to the contractor and associated direct costs.

(f) *Additional HUD-initiated adjustments.* Notwithstanding any other provisions of this subpart, HUD may at any time make an upward or downward adjustment in the amount of the PHA's operating subsidy as a result of data subsequently available to HUD which alters projections upon which the approved operating subsidy was based. Normally adjustments shall be made in total in the PHA fiscal year in which the needed adjustment is determined; however, if a downward adjustment would cause a severe financial hardship on the PHA, the HUD Field Office may establish a recovery schedule which represents the minimum number of years needed for repayment.

(Approved by the Office of Management and Budget under control numbers 2577–0026, 2577–0029, 2577–0071, and 2577–0125)

[50 FR 47375, Nov. 18, 1985, as amended at 56 FR 46362, Sept. 11, 1991; 57 FR 2679, Jan. 23, 1992; 57 FR 4290, Feb. 4, 1992; 59 FR 33656, June 30, 1994; 59 FR 51854, Oct. 13, 1994; 61 FR 17541, Apr. 19, 1996; 61 FR 51183, Sept. 30, 1996]

§ 990.111 Submission and approval of operating subsidy calculations and budgets.

(a) *Required documentation.* (1) Prior to the beginning of its fiscal year, the PHA shall prepare an operating budget in a manner prescribed by HUD. The Board of Commissioners shall review and approve the budget by resolution. Each fiscal year, the PHA shall submit to the HUD Field Office, in a time and manner prescribed by HUD, the approved board resolution and the required operating subsidy eligibility calculation forms. The PHA shall submit revised calculations in support of mandatory or other adjustments based on procedures prescribed by HUD.

(2) HUD may direct the PHA to submit its complete operating budget if the PHA has failed to achieve certain specified operating standards, or for other reasons which in HUD's determination threaten the PHA's future serviceability, efficiency, economy, or stability.

(b) *HUD operating budget review.* (1) The HUD Field Office will perform a detailed review on operating budgets that are subject to HUD review and approval. If the HUD Field Office finds that an operating budget is incomplete, includes illegal or ineligible expenditures, mathematical errors, errors in the application of accounting procedures, or is otherwise unacceptable, the HUD Field Office may at any time require the submission by the PHA of further information regarding an operating budget or operating budget revision.

(2) When the PHA no longer is operating in a manner that threatens the future serviceability, efficiency, economy, or stability of the housing it operates, HUD will notify the PHA that it no longer is required to submit an operating budget to HUD for review and approval.

[61 FR 17541, Apr. 19, 1996]

§ 990.112 Payments procedure for operating subsidy under PFS.

(a) *General.* Subject to the availability of funds, payments of operating subsidy under PFS shall be made generally by electronic funds transfers, based on a schedule submitted by the PHA and approved by HUD, reflecting the PHA's projected cash needs. The schedule may provide for several payments per month. If a PHA has an unanticipated, immediate need for disbursement of approved operating subsidy, it may make a informal request to HUD to revise the approved schedule. (Requests by telephone are acceptable.)

(b) *Payments procedure.* In the event that the amount of operating subsidy has not been determined by HUD as of the beginning of a PHA's budget year under these PFS regulations, annual or monthly or quarterly payments of operating subsidy shall be made, as provided in paragraph (a) of this section, based upon the amount of the PHA's operating subsidy for the previous budget year or such other amount as HUD may determine to be appropriate.

(c) *Availability of funds.* In the event that insufficient funds are available to make payments approvable under PFS for operating subsidy payable by HUD, HUD shall have complete discretion to revise, on a pro rata basis or other basis established by HUD, the amounts of operating subsidy to be paid to PHAs.

[41 FR 55676, Dec. 21, 1976. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 50 FR 47376, Nov. 18, 1985. Redesignated at 61 FR 17542, Apr. 19, 1996]

§ 990.113 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.

(a) *Policy.* The income of each family must be reexamined at least annually. PHAs must be in compliance with this reexamination requirement to be eligible to receive full operating subsidy payments.

(b) *PHAs in compliance with requirements.* Each submission of the original calculation of operating subsidy eligibility for a fiscal year shall be accompanied by a certification by the PHA that it is in compliance with the annual income reexamination requirements and that rents have been or will be adjusted in accordance with current HUD requirements.

(c) *PHAs not is compliance with requirements.* Any PHA not in compliance with annual income reexamination requirement at the time of Operating Budget submission shall furnish to the HUD Field Office a copy of the procedure it is using to attain compliance and a statement of the number of families that have undergone reexamination during the twelve months proceding the date of the Operating Budget submission, or the revision thereof. If, on the basis of such submission, or any other information, the Field Office Director determines that the PHA is not substantially in compliance with the annual income reexamination requirement, he or she shall withhold payments to which the PHA might otherwise be entitled under this part, equal to his or her estimate of the loss of rental income to the PHA resulting from its failure to comply with those requirements.

(Approved by the Office of Management and Budget under control number 2577–0026)

[50 FR 47377, Nov. 18, 1985. Redesignated and amended at 61 FR 17542, Apr. 19, 1996]

§ 990.114 Phase-down of subsidy for units approved for demolition.

(a) *General.* Units that have both been approved by HUD for demolition and been vacated in FFY 1995 and after will be excluded from an HA's determination of Unit Months Available when vacated, but they will remain eligible for subsidy in the following way:

(1) For the first twelve months beginning with the month that a unit meets both conditions of being approved for demolition and vacant, the full AEL will be allowed for the unit.

(2) During the second twelve-month period after meeting both conditions, 66 percent of the AEL will be allowed for the unit.

(3) During the third twelve-month period after meeting both conditions, 33 percent of the AEL will be allowed for the unit.

(b) *Special case for long-term vacant units.* Units that have been vacant for longer than 12 months when they are approved for demolition are eligible for funding equal to 20% of the AEL for a 12-month period.

(c) *Treatment of units replaced with Section 8 Certificates or Vouchers.* Units that are replaced with Section 8 Certificates or Vouchers are not subject to the provisions of this section.

(d) *Treatment of units replaced with public housing units.* When replacement conventional public housing units become eligible for operating subsidy, the demolished unit is no longer eligible for any funding under this section.

(e) *Determination of what units are ''replaced.''* For purposes of this section, replacements are applied first against units that otherwise would fall in paragraph (a) of this section; any remaining replacements should be used to reduce the number of units qualifying under paragraph (b) of this section.

(f) *Treatment of units combined with other units.* Units that are removed from the inventory as a result of being combined with other units are not considered to be demolished units for this purpose.

(g) *Retroactive effect.* This section is to be applied retroactively for units approved for demolition during Federal Fiscal Years 1995 and 1996. HAs affected by this provision may submit a revised calculation of operating subsidy eligibility for the subject fiscal year(s).

[61 FR 51183, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51183, Sept. 30, 1996, § 990.114 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget. When approval is obtained, HUD will publish notice of the effective date in the FEDERAL REGISTER.

§ 990.116 Three-year incentive adjustments.

(a) *Applicability.* For the period of Federal Fiscal Year 1996 through Federal Fiscal Year 1998, the provisions of this section apply to permit HAs to retain certain sources of income that would otherwise be offset by a reduction of subsidy. The combined amount retained in accordance with the provisions of this section may not exceed the amount of the PFS subsidy shortfall applicable to an HA in the subject fiscal year.

(b) *Increases in earned income.* HAs are permitted to retain any increase in dwelling rental income realized after April 1, 1996 as a result of increased resident earned income, where the Board of Commissioners of the HA has certified that the HA is making significant efforts to increase the earned income of existing residents by adopting the optional earned income exclusion and not just taking actions regarding new admissions. To implement this paragraph (b), the HA will compare the rental income per occupied unit resulting from earned income from April 1, 1996 to the rental income per occupied unit resulting from earned income on the date of the rent roll used for PFS calculation. If an HA does not have the April 1, 1996 data available, HUD may approve the use of data from a later month.

(c) *Increases in other income.* HAs are permitted to retain any increase in "other income" based on using the definition provided in this section, as compared with using the definition found in §990.102. For purposes of this section, the amount of "other income" is limited to the following three sources:

(1) *Excess Utilities:* charges to tenants for excess utility consumption for HA supplied utilities.

(2) *Nondwelling Rental Income:* rent billed to lessees of dwelling units rented for nondwelling purposes. Rent billed to lessees of nondwelling facilities will not be included except for rent billed to other HUD programs (e.g.; Section 8, congregate housing, family investment centers).

(3) *Other Income:* Only charges to other HUD programs (e.g.; Section 8, congregate housing, family investment centers) for use of community space, central office management and maintenance space will be taken into consideration. HAs will calculate the amount of "other income" to be retained in a manner prescribed by HUD.

[61 FR 51183, Sept. 30, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51183, Sept. 30, 1996, §990.116 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget. When approval is obtained, HUD will publish notice of the effective date in the FEDERAL REGISTER.

§990.117 Determining actual and requested budget year occupancy percentages.

(a) *Actual Occupancy Percentage.* When submitting Performance Funding System Calculations for Requested Budget Years beginning on or after July 1, 1996, the PHA shall determine an Actual Occupancy Percentage for all Project Units included in the Unit Months Available. The PHA shall have the option of basing this option on either:

(1) The number of units occupied on the last day of the month that ends 6 months before the beginning of the Requested Budget Year; or

(2) The average occupancy during the month ending 6 months before the beginning of the Requested Budget Year. If the PHA elects to use an average occupancy under this paragraph (a)(2), the PHA shall maintain a record of its computation of its Actual Occupancy Percentage.

(b) *Requested Budget Year Occupancy Percentage.* The PHA will develop a Requested Budget Year Occupancy Percentage by taking the Actual Occupancy Percentage and adjusting it to reflect changes up or down in occupancy during the Requested Budget Year due to HUD-approved activities such as units undergoing modernization, new development, demolition, or disposition. If after the submission and approval of the Performance Funding System Calculations for the Requested Budget Year, there are changes up or down in occupancy because of modernization, new development, demolition or disposition that are not reflected in the Requested Budget Year Occupancy Percentage, the PHA may submit a revision to reflect the actual change in occupancy due to these activities.

(c) *Documentation Required to be Maintained.* The PHA must maintain, and upon HUD's request, make available to HUD specific documentation of the occupancy status of all units, including long-term vacancies, vacant units undergoing modernization, and units vacant due to circumstances and actions beyond the PHA's control. This documentation shall include a listing of the units, street addresses, and project/management control numbers.

(Approved by the Office of Management and Budget under control number 2577–0066.)

[61 FR 7592, Feb. 28, 1996]

§990.118 [Reserved]

§990.119 Transition provisions.

(a) *Treatment of units already under an approved modernization budget.* Vacant units to be rehabilitated under modernization budgets approved in FY 1995 or prior are subject to the modernization implementation schedule, without extension, previously approved by HUD. It is the intent of HUD not to penalize PHAs that have longer construction schedules in an approved modernization budget.

(b) *Treatment of Existing COPs.* (1) A PHA that is operating under a Comprehensive Occupancy Plan (COP) approved by HUD under § 990.118, as that section existed immediately before April 1, 1996, may, until the expiration of its COP, continue to determine its PFS eligibility under the provisions of part 990 as that part existed immediately before April 1, 1996. If the PHA does not elect to continue to determine its PFS eligibility using its COP, the PHA's PFS eligibility will be calculated in accordance with this part.

(2) HUD will not approve any extensions of COPs.

[61 FR 7592, Feb. 28, 1996]

§ 990.120 Audit.

PHAs that receive financial assistance under this part shall comply with the audit requirements in 24 CFR part 44. If a PHA has failed to submit an acceptable audit on a timely basis in accordance with that part, HUD may arrange for, and pay the costs of, the audit. In such circumstances, HUD may withhold, from assistance otherwise payable to the PHA under this part, amounts sufficient to pay for the reasonable costs of conducting an acceptable audit, including, when appropriate, the reasonable costs of accounting services necessary to place the PHA's books and records into auditable condition. The costs to place the PHA's books and records into auditable condition do not generate additional subsidy eligibility under this part.

[56 FR 46363, Sept. 11, 1991]

§ 990.121 Effect of rescission.

If there is a rescission of appropriated funds that reduces the level of Comprehensive Grant Program funding in an approved Annual Statement under the CGP, to the extent that the PHA can document that it is not possible to complete all the vacant unit rehabilitation in the PHA's approved Annual Statement, the PHA may seek and HUD may grant a waiver for 1 fiscal year to permit full PFS eligibility for those units approved but not funded.

[61 FR 7592, Feb. 28, 1996]

Subpart B—Financial Management Systems, Monitoring and Reporting

SOURCE: 53 FR 8067, Mar. 11, 1988, unless otherwise noted.

§ 990.201 Purpose—General policy on financial management, monitoring and reporting.

The financial management systems, reporting and monitoring on program performance and financial reporting will be in compliance with the requirements of 24 CFR 85.20, 85.40 and 85.41 except to the extent that HUD requirements provide for additional specialized procedures necessary to permit the Secretary to make the determinations regarding the payment of operating subsidy specified in section 9(a)(1) of the United States Housing Act of 1937.

§ 990.202 Applicability.

The provisions of this subpart B are applicable to the development, modernization, and operation of the Turnkey III and Turnkey IV Homeownership Opportunity Programs and the housing owned by the PHAs of the Virgin Islands, Guam, Puerto Rico and Alaska.

[57 FR 5588, Feb. 14, 1992]

Subpart C—Project-Based Accounting

SOURCE: 57 FR 61231, Dec. 23, 1992, unless otherwise noted.

§ 990.301 Applicability.

(a) The provisions of this subpart C are applicable to all PHAs that receive operating subsidies pursuant to section 9 of the U.S. Housing Act of 1937 (the Act), both PFS-eligible PHAs and PHAs outside the 48 adjacent states for which operating subsidy eligibility is not calculated in accordance with the PFS.

(b) PHAs that own and operate 250 or more dwelling rental units under title I of the Act, exclusive of section 8 units, are required to develop and maintain project-based accounting systems consistent with § 990.310. Where a portion of a PHA's rental inventory is separately managed (by a resident management corporation, for example), the 250-unit threshold shall apply to the total number of PHA-owned dwelling rental units, including those separately managed.

(c) PHAs that do not receive operating subsidies or that have fewer than 250 rental units may, but are not required to, develop and use project-based accounting systems consistent with the specifications of this subpart.

§990.305 Definitions.

Cost Center. A set of units, activities, programs, or staff that are grouped by a PHA for purposes of management, financial monitoring, and analysis. Cost centers can be delineated by administrative departments or divisions within a PHA, by office locations, by individual projects or clusters or communities of projects that consist of one or more contiguous buildings, an area of contiguous row houses, or scattered-site buildings.

Project. A building or set of buildings identifiable as a development project under a HUD-assigned project number.

§990.310 Project-based accounting.

(a) PHAs identified in §990.301(b) shall develop and maintain a system of accounting for operating income and operating costs for each project or operating cost center in a manner capable of generating information to meet HUD consolidated reporting requirements.

(b) Operating income and cost information to be accounted for at a project or cost center level shall include at least rental income and the administrative costs, utilities costs, maintenance costs, repair costs, and such other income and costs identified by the PHA as project-specific for management purposes. The minimum income and expense distribution requirements for project-based accounting information include:

(1) Project-specific operating income credited to a specific project or cost center which shall include, at a minimum, rental income and excess utilities income; and

(2) Project-specific operating expense to be charged to a specific project or cost center level which shall include, at a minimum, utilities expense and direct maintenance (material and labor) expense, in addition to any other operating expenses in the 4000 series of accounts which are identified by the PHA as project-specific for management purposes (for example, tenant services or protective services personnel assigned to a specific project).

(c) Indirect operating income and indirect operating expenses that are not project-specific are not required to be accounted for at, or allocated to, a project or cost center level. Indirect income and expense that is not required to be allocated to the project or cost center level includes non-project-specific income and expense, including PHA central office overhead expense, which is not identifiable with, or readily assignable to, a specific project or cost center.

(d) PHAs may establish operating cost centers on any reasonable basis that reflects the PHA management structure and that meets the financial information needs at the lowest level of line authority within that management structure. A PHA's determination of appropriate cost centers and method of income and cost distribution shall be controlling unless HUD determines there is good cause for requiring some other frame of reference for aggregating financial information.

§990.315 Records and reports.

(a) Each PHA shall maintain fiscal year-end income and expense statements, which reflect the PBA information required by §990.310, for each project or other cost center and shall make these available for review upon request by interested members of the public.

(b) Each PHA shall distribute such year-end financial statements to the Chairman and to each member of the Housing Authority Board of Commissioners, and to such other State and local public officials as the Secretary may specify. Project-based income and expense statements shall be made available to Board chairmen as soon as is practicable after the close of the fiscal period.

§ 990.320 Certifications.

(a) The PHA shall certify, by the effective date specified in § 990.325, in a form acceptable to HUD, that the PHA is aware of and is taking steps to implement project-based accounting and will produce the fiscal year-end reports required under § 990.315. The certification shall identify each project or other cost center, the basis upon which each project or other cost center has been established and determined to be in compliance with the definitions of § 990.305, above, and where a cost center consists of units in two or more projects (as identified by HUD-assigned development project number) the PHA shall identify the individual development project numbers, the number of units, and a characterization (i.e., high-rise family, mid-rise family, scattered-site, etc.) of each numbered project included in the cost center.

(b) A certification made in accordance with this section shall be updated if the PHA deletes units, adds additional units or projects (as identified by HUD-assigned development project numbers) to its inventory, or otherwise elects to reconfigure its system of cost centers.

(Approved by the Office of Management and Budget under control number 2577–0159)

§ 990.325 Compliance dates.

(a) The provisions of this subpart shall apply for PHA fiscal years beginning on or after January 1, 1993, for PHAs operating 500 or more public housing rentals units.

(b) The provisions of this subpart shall apply for PHA fiscal years beginning on or after January 1, 1994, for PHAs operating fewer than 500 public housing rental units. In the case of PHAs whose housing programs expand to the point at which their inventory of rental units exceeds the threshold stated in § 990.301(b), the provisions of § 990.310 shall apply at the beginning of the PHA's first fiscal year after the date on which its inventory of rental units reaches that threshold.

Subpart D—Resident Management Corporations Operating Subsidy

SOURCE: 59 FR 43644, Aug. 24, 1994, unless otherwise noted.

§ 990.401 Calculation of operating subsidy.

Operating subsidy will be calculated separately for any project managed by a resident management corporation. This subsidy computation will be the same as the separate computation made for the balance of the projects in the PHA in accordance with this part, with the following exceptions:

(a) The project managed by a resident management corporation will have an Allowable Expense Level based on the actual expenses for the project in the fiscal year immediately preceding management under this subpart. These expenditures will include the project's share of any expenses which are overhead or centralized HA expenditures. The expenses must represent a normal year's expenditures for the project, and must exclude all expenditures which are not normal fiscal year expenditures as to amount or as to the purpose for which expended. Documentation of this expense level must be presented with the project budget and approved by HUD. Any project expenditures funded from a source of income other than operating subsidies or income generated by the locally owned public housing program will be excluded from the subsidy calculation. For budget years after the first budget year under management by the resident management corporation, the Allowable Expense Level will be calculated as it is for all other projects in accordance with § 990.105(e)(4).

(b) The resident management corporation project will estimate dwelling rental income based on the rent roll of the project immediately preceding the assumption of management responsibility under this subpart, increased by the estimate of inflation of tenant income used in calculating PFS subsidy.

(c) The resident management corporation will exclude, from its estimate of other income, any increased income directly generated by activities by the corporation or facilities operated by the corporation.

(d) Any reduction in the subsidy of a HA that occurs as a result of fraud, waste, or mismanagement by the HA shall not affect the subsidy calculation for the resident management corporation project.

[59 FR 43644, Aug. 24, 1994, as amended at 61 FR 17542, Apr. 19, 1996]

§ 990.402 Calculation of total income and preparation of operating budget.

(a) Subject to § 990.403, the amount of funds provided by a HA to a project managed by a resident management corporation under this subpart may not be reduced during the three-year period beginning on February 5, 1988 or on such later date as a resident management corporation first assumes management responsibility for the project.

(b) For purposes of determining the amount of funds provided to a project under § 990.402(a) of this section, the provision of technical assistance by the HA to the resident management corporation will not be included.

(c) The resident management corporation and the HA must submit a separate operating budget, including the calculation of operating subsidy eligibility in accordance with § 990.401, for the project managed by a resident management corporation to HUD for approval. This budget will reflect all project expenditures and will identify which expenditures are related to the responsibilities of the resident management corporation and which are related to the functions which will continue to be performed by the HA.

(d) Each project or part of a project that is operating in accordance with the ACC amendment relating to this subpart and in accordance with a contract vesting maintenance responsibilities in the resident management corporation will have transferred, into a sub-account of the operating reserve of the host HA, an operating reserve. Where all maintenance responsibilities for the resident-managed project are the responsibility of the corporation, the amount of the reserve made available to projects under this subpart will be the per unit cost amount available to the HA operating reserve, exclusive of all inventories, prepaids and receivables (at the end of the HA fiscal year preceding implementation), multiplied by the number of units in the project operated in accordance with the provisions of this subpart. Where some, but not all, maintenance responsibilities are vested in the resident management corporation, the contract may provide for an appropriately reduced portion of the operating reserve to be transferred into the corporation's sub-account.

(e) The use of the reserve will be subject to all administrative procedures applicable to the conventionally owned public housing program. Any expenditure of funds from the reserve will be for eligible expenditures which are incorporated into an operating budget subject to approval by HUD.

(f) Investment of funds held in the reserve will be in accordance with the provisions of Chapter 4 of the Financial Management Handbook, 7476.1 REV.1 and interest generated will be included in the calculation of operating subsidy in accordance with this part.

§ 990.403 Adjustments to total income.

(a) Operating subsidy calculated in accordance with § 964.401 of this chapter will reflect changes in inflation, utility rates and consumption, and changes in the number of units in the resident management project.

(b) In addition to the amount of income derived from the project (from sources such as rents and charges) and the operating subsidy calculated in accordance with § 990.401 of this subpart, the contract may specify that income be provided to the project from other sources of income of the HA.

(c) The following conditions may not affect the amounts to be provided to a project managed by a resident management corporation under this subpart:

(1) Any reduction in the total income of a HA that occurs as a result of fraud, waste, or mismanagement by the HA.

(2) Any change in the total income of a HA that occurs as a result of project-specific characteristics that are not shared by the project managed by the corporation under this subpart.

§ 990.404 Retention of excess revenues.

(a) Any income generated by a resident management corporation that exceeds the income estimated for the income category involved as specified in the RMC's management contract must be excluded in subsequent years in calculating:

(1) The operating subsidy provided to a HA under part 990, subpart A.

(2) The funds provided by the HA to the resident management corporation.

(b) The management contract must specify the amount of income expected to be derived from the project (from sources such as rents and charges) and the amount of income to be provided to the project from the other sources of income of the HA (such as operating subsidy under part 990, subpart A, interest income, administrative fees, and rents). These income estimates must be calculated consistent with HUD's administrative instructions. Income estimates may provide for proration of anticipated project income between the corporation and the PHA, based upon the management and other project-associated responsibilities (if any) that are to be retained by the PHA under the contract.

§ 990.405 Use of retained revenues.

Any revenues retained by a resident management corporation under § 990.404 of this subpart may only be used for purposes of improving the maintenance and operation of the project, establishing businesses enterprises that employ residents of public housing, or acquiring additional dwelling units for lower income families. Units acquired by the resident management corporation will not be eligible for payment of operating subsidy.

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

Subpart A—General

Sec.